IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 11868 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMIBEN C SOLANKI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MS SHALINI S MAIR for Applicant(s) : 1,
MS ARCHANA RAVAL A.P.P. for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 12/10/2007

ORAL JUDGMENT

Leave to amend.

1. Rule. Ms. Archana Raval learned A.P.P., waives service of rule on behalf of the opponent State.

2. The applicant has been detained in judicial custody since 27th July, 2007. Her detention is in connection with the offence registered at C.R. No. I-258/2007 with Fatehgunj Police Station, Vadodara. The allegation against her is that she abetted her son Amit who is also an accused of this case in enticing away the daughter of the informant. Thereby they committed offence which are made punishable under Sections 363, 366 etc., of the Indian Penal Code.

3. I have heard Ms. Shalini Mair learned advocate for the applicant and Ms. Archana Raval learned A.P.P., for the opponent State. I have also perused the record of this application. The only allegation against the applicant is that she went with sister of accused no. 1, to village Nisraya and advised accused no. 1 to stay at Nisraya to avoid arrest and further assured him that she would secure legal assistance to him. Thereby she has aided and abetted original accused no. 1. These allegations even if they are taken to be true, by no stretch of imagination, it can be said that she aided and abetted accused no. 1 in abducting the girl. She is a lady aged about 67 years. The learned Presiding Officer, Fast Track Court, Vadodara while passing the order of rejection dated 24th August, 2007, has arrived at a

conclusion that she has committed serious offence. It is very strange that even in such cases, the learned Judge does not exercise the discretion and powers vested in him in favour of the accused, on the ground that she has been involved in serious case. The learned Judge has completely overlooked the fact that the lady is aged about 67 years and she had been in custody for almost three months by now. The only role which is alleged to have played by her is that she went and assured her son that she would secure legal assistance to him. Any mother in her place, would do the same thing. By no stretch of imagination, it can be said that she has aided and abetted the main accused in kidnapping the girl. More than often, this Court has come across cases wherein, the trial Court could have without any difficulty granted bail, strictly in accordance with the merits of the case. But that has not been done. The reason is not far to seek. A plain reading of such order together with the material on record would show that despite ample merits existing in favour of the accused, the application under Section 439 of the Criminal Procedure Code is rejected holding that such accused is involved in a serious case. This is despite the fact that there is either very scanty or no material at all to substantiate such finding. Such attitude is being adopted by the concerned judicial officer with a view to shirk his responsibilities in the

matter of deciding the bail application and throwing the burden on this Court. When the sub-ordinate Court is vested with adequate powers under Criminal Procedure Code to grant bail for non-bailable cases, such powers are required to be exercised on sound judicial principles and the Court should not refuse to exercise powers simply under fear that there may be some criticism from the higher Court. Time and again, the sub-ordinate judiciary has been impressed upon in the meeting of the judicial officers or seminars that they should exercise such powers, in accordance with the merits of the case and sound judicial principles without entertaining any fear of criticism. But that has not been done and always attitude of throwing responsibility of granting bail on this Court is adopted, which is not at all healthy for the institution. It is high time for the judicial officers of the sub-ordinate judiciary to shed away this fear and start taking decision in accordance with the merits of the case.

4. Considering the submissions made on behalf of the parties and having regard to the facts and circumstances of the case, the application is allowed and applicant is ordered to be released on bail in connection with Crime Register No. I-258/2007 registered at Fatehgunj Police Station, Vadodara for the offences

alleged against her in this application on her executing bond of Rs.5,000=00 [Rupees Five Thousand only] with one solvent surety of the like amount to the satisfaction of the lower Court and subject to the conditions that she shall,

a) not take undue advantage of her liberty or abuse her liberty;

b) not to try to tamper or pressurize the prosecution witnesses or complainant in any manner;

c) maintain law and order and should co-operate the investigating officers;

d) not act in a manner injurious to the interest of the prosecution;

e) not leave the local limits of State of Gujarat without the prior permission of the concerned Sessions Judge.

f) furnish the address of her residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court.

g) surrender her passport, if any, to the lower Court within a week from today.

5. If breach of any of the above conditions is committed, the concerned Sessions Judge will be free to issue warrant or take appropriate action in the matter.

6. Bail before the lower Court having jurisdiction to try the case. It would be open to the trial court concerned to give time to furnish the solvency certificate if prayed for.

7. Rule is made absolute. Direct service is permitted.

[Akshay H. Mehta, J.]

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